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No. 09-935

In the Supreme Court of the United States

WILLIAM SHORTER, JR., PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

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Petitioner contends (Pet. 4-22) that the remedial holding of *United States* v. *Booker*, 543 U.S. 220 (2005), under which the Sentencing Guidelines are advisory, applies to proceedings on his motion for modification of his sentence under 18 U.S.C. 3582(c) in light of the Sentencing Commission's policy statement making Amendment 706 to the Guidelines retroactive. On December 7, 2009, this Court granted certiorari in *Dillon* v. *United States*, No. 09-6338, to address whether the federal sentencing guidelines are binding when a district court imposes a new sentence pursuant to a revised guidelines range under Section 3582(c). Accordingly, the petition for a writ of certiorari should be held pending the

Court's resolution of *Dillon*, and then disposed of as appropriate in light of the decision in that case.*

Respectfully submitted.

ELENA KAGAN
Solicitor General

FEBRUARY 2010

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* The government waives any further response to the petition unless this Court requests otherwise.